S.B. CIVIL MISC. APPEAL NO. 636/1994
(Khaju Shah & ors. Vs. Mohanlal & ors.)

Date of Order :: 29th March 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K.Singhal for the appellant

Mr.Arjun Singh) for the respondents
Mr.R.K.Mehta)
Mr.D.R.Loonkar)

By the impugned award dated 08.08.1994, the Motor Accidents Claims Tribunal (Additional District Judge) Nagaur camp Deedwana has proceeded to reject the claim application submitted by the parents, brother, wife and child of the vehicular accident victim Munshi Shah, about 22 years in age, who expired on 28.11.1986 due to the injuries sustained in an accident involving a bus belonging to the respondent-Rajasthan State Road Transport Corporation (RSRTC) bearing registration No. RSM 9733 and a private bus bearing registration No. RRM 2277, with the observation that the driver of the private bus was acquitted by the criminal court; and that there was no evidence available on record to find as to which of the two drivers was at fault; or if the accident occurred for composite negligence of both; or if there was any negligence on the part of the deceased. According to the Tribunal,-

"पत्रावली पर ऐसी कोई साक्ष्य नहीं हे जिससे यह प्रमाणित हो सके कि दोनों चालको में से किस चालक की लापरवाही थी अथवा दोनो की संयुक्त लापरवाही थी अथवा स्वयं मृतक की लापरवाही थी । मृतक की मां एडब्लू 1 श्रीमति करीमन इस दुर्घटना की चक्षुदर्शी गवाह नहीं है । वह तो इस दुर्घटना से मुंशीशाह की मृत्यु होना ही प्रमाणित करती है । वह दुर्घटना स्थल पर बाद में भी नहीं पहुंची । इस प्रकार प्रलेख पर कोई साक्ष्य नहीं होने से यह स्पष्ट नहीं हो सका कि किसकी गलती से यह दुर्घटना हुई ।"

On the considerations aforesaid, the Tribunal has found that negligence of the non-applicants was not established and for this reason alone has proceeded to reject the claim for compensation altogether.

The approach of the Tribunal is difficult to be appreciated. The factum of vehicular accident and resultant demise of the victim, the essentially fundamental aspects for maintaining a claim for compensation are not in dispute. That the accident occurred when the roadways bus RSM 9733 the deceased was travelling in brushed against the private bus is also not in dispute. It is also noticed that though the claimants produced only the mother of the deceased Smt.Kariman as AW-1 who was not an eyewitness but then, the non-applicants led no evidence whatsoever. On the basis of the evidence as produced on record and so also for the evidence omitted to be produced, the Tribunal could have come to a conclusion about the responsibility towards accident. In any case, the claim application could not have been rejected altogether when demise of the victim due to the bodily injuries caused by

the use of two vehicle is not in dispute; and when there is nothing on record to find any contribution of the deceased to the accident or to the injuries.

During the course of submissions, learned counsel for the claimants-appellants has shown certified copies available with him of the papers pertaining to the criminal case tried in relation to the accident in question that include the mechanical inspection reports of the two vehicles and so also the site inspection report. It appears that the claimants were also not vigilant while prosecuting the claim case and such material documents related with the accident were not produced before the Tribunal. Be that as it may, having regard to the facts and circumstances of this case, this Court is of opinion that rejection of claim application altogether has resulted in gross failure of justice and it appears to be a fit case where the matter ought to be remanded to the Tribunal for consideration afresh after affording adequate opportunity of leading evidence to the respective parties.

Accordingly, this appeal is allowed to the extent that the impugned award dated 08.08.1994 is set aside and the matter is remanded to the Tribunal for consideration and decision of the claim application afresh after affording further and adequate opportunity of leading evidence to all the contesting parties.

It is noticed that non-applicant No.1 Mohanlal, the driver of roadways bus has already expired; non-applicants Nos.2 and 3 are represented by learned counsel Mr.R.K.Mehta; non-applicants Nos.4 and 5 of RSRTC are represented by learned counsel Mr.Arjun Singh; and non-applicant No.6, insurer of private bus is represented by learned counsel Mr.D.R.Loonkar; and there is no insurance company for the roadways bus RSM 9733 as stated as non-applicant No.7. Therefore, all the contesting parties, being represented in this appeal through their counsel, are directed to appear before the Tribunal on 30.04.2007.

The Tribunal shall extend one opportunity to all the parties to produce documentary evidence, after obtaining requisite admission/denial, as sought to be produced by them; and thereafter shall extend reasonable opportunity of leading oral evidence to all the parties and shall endeavour to dispose of the claim application on merits and in priority.

There shall be no order as to costs of this appeal.

Record be sent to the Tribunal immediately.

(DINESH MAHESHWARI), J.

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